

QUESTIONNAIRE
ON THE IMPACT OF COVID-19 ON RULE OF LAW AND
JUDICIAL ACTIVITY:
RESPONSE OF ASSOCIATION OF JUDGES OF IRELAND
(AJI)

- 1. What are the main problems the Judiciary experienced at a general level in your country as a consequence of the legal reforms approved in order to cope with the COVID-19 pandemic?**

The main effect the Covid-19 pandemic has had on the judiciary, generally speaking, is that fewer cases in the courts are being heard. In order to reduce the number of people in court buildings (due to physical distancing requirements), and to ensure the safety of the judiciary, Courts Service staff and the public, the number of and types of cases which are being heard across all courts within the jurisdiction, were initially limited, at the commencement of the pandemic (in mid-March 2020), to specific urgent matters identified by each court.¹ As subsequent answers show, the number and types of cases that can be heard have been greatly expanded since then. Remote hearings have been introduced to allow more cases to be heard.

- 2. Did the legal reforms approved in your country in order to cope with the COVID-19 pandemic affect Rule of Law and Human Rights principles? If any, pls. enumerate them.**

No, the legal reforms did not affect the Rule of Law or Human Rights principles. Whilst the emergency legislation introduced did make amendments to certain Acts already in place, the Legislature has endeavoured to ensure that rule of law and human rights principles are respected. The legislative measures introduced to halt the spread of covid-19 and to address the economic and social effects of the virus were the subject of a legal challenge in judicial review proceedings in the High Court in *O'Doherty v. The Minister for Health* [2020] IEHC 209. The applicants sought leave to challenge the legislative measures on constitutional grounds. This application was unsuccessful at first instance. It may be the subject of an appeal to a higher court. The legislation remains in place.

¹ [Statements in respect the arrangement of Courts – Covid-19](#)

3. As to the judicial organisation of your country, what impact had the legal reforms approved in order to cope with the COVID-19 pandemic? More specifically, what were their effects on the powers of the Minister of Justice, Council for Judiciary, Heads of Courts, Heads of Prosecution Services, Judges, Prosecutors, Court Administrators, Court Managers?

Section 10 of the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 amends the Health Act 1947 by inserting a new section, s.31A. This section gives ministers of government, including the Minister for Justice and Equality, the power to make regulations. This section states:

“The Minister may, having regard to the immediate, exceptional and manifest risk posed to human life and public health by the spread of Covid-19 and to the matters specified in subsection (2), make regulations for the purpose of preventing, limiting, minimising or slowing the spread of Covid-19 (including the spread outside the State) or where otherwise necessary, to deal with public health risks arising from the spread of Covid-19 and, without prejudice to the generality of the foregoing, such regulations may, in particular, provide for all or any of the following”

So far as the AJI is aware, the legislation enacted during the pandemic does not give express powers to any of the other persons listed in the question. However, the Chief Justice and Presidents of the various court, judges and the Courts Service have all been working together to ensure the latest government advice is being followed within court buildings to ensure that the safety of all court users is paramount. It is also the overall policy to ensure that the inevitable reduction in the throughput of cases through the court system is minimised to the greatest extent possible. Physical (where possible) and remote hearings of cases form part of that strategy.

4. As far as Court activity, Court proceedings and trials are concerned, what was the impact of legal measures adopted? Pls. provide relevant information distinguishing between civil, criminal and administrative cases.

The impact of the Covid-19 pandemic on court activity and how each court is dealing with different types of cases is set out on the Courts Service website. This is hyperlinked above at footnote 1. Subsequent to this, the Supreme Court issued a practice direction, SC 21, on the 16th April, 2020. This sets out the procedures which are to be taken in relation to cases within the Supreme Court, dealing with applications for leave to appeal, case management, papers, the hearing itself and the judgment². Prior to this, an initial restriction on court use was announced on the 13th March. This can be found [here](#). The courts continue to operate with restrictions in place in order to maintain social distancing and to ensure the safety of all court users whilst also keeping open access to justice.

The courts have begun a gradual easing of the restrictions which were put in place mentioned above. This is seen in the statement issued on 13th May which can be found [here](#). In essence,

² [Supreme court practice direction SC 21](#)

these statements set out the goal of the courts to increase the number, and types, of cases heard across all court levels, as well as an increase use of remote court hearings in suitable cases. These restrictions are subject to change given the ever-evolving nature of the pandemic and so new measures may be announced after this document is finalised. Both physical and remote hearings are taking place at the present time, albeit at a much lower level than before the pandemic.

5. Did “urgent” cases receive a different treatment and in this framework was a special legal definition or specification of “urgency” introduced for Court proceedings and trials?

Urgent cases have received different treatment during the ongoing pandemic. In the High Court, it was decided that the following non-criminal urgent business would continue to be dealt with. These types of cases were:

1. Habeas corpus
2. Extradition
3. Bail applications
4. Injunctions and their enforcement
5. Wardship matters
6. Urgent judicial review applications

This list of urgent cases in the High Court was announced on the 13th March 2020 at the beginning of the crisis in Ireland. As the courts begin to gradually ease these restrictions, more types of cases have been added to the courts diary as well as these urgent matters mentioned above. With effect from 18th May, the additional types of cases added to the “urgent” cases list, were as follows:

1. Insolvency matters both corporate and personal.
2. Judicial review applications including Strategic Infrastructure challenges.
3. Probate non-contentious business.
4. All Family Law applications including adoption matters.
5. Commercial list cases.
6. Chancery list cases.
7. Non-Jury list cases.
8. Criminal Asset Bureau cases.

All other civil actions and applications were adjourned generally. It was also decided that no new criminal trials would begin in the Criminal Courts of Justice (CCJ), but ongoing trials would have to continue. Bail applications and extradition hearings were directed to be conducted by video link.

However, if the parties to a case outside of the list set out above could show that the case was urgent and could not be adjourned generally, they could seek permission from the court to have the case heard.

In the Commercial Court it was possible, despite the restrictions, to continue to hear urgent applications physically, provided that government restrictions, including physical distancing and other public health requirements, were complied with. This meant, for example, that certain applications to the court which had been advertised in international publications, in line with the legislation, were still permitted to go ahead on the date advertised. An example of a type of application falling under this category: *In re Allergan plc* [2020] IEHC 214.

Similarly, in the Court of Appeal and the Supreme Court, parties could write to the respective courts if they felt that their appeal was urgent and should proceed.

There is no specific legal definition on what constitutes an urgent case, but rather it is left up to the particular court president or judge to decide.

6. Did the amount of money and, more generally, the value at stake in the case play a role in the treatment of it?

No, the amount of money or value at stake in a case did not determine how it was treated. As can be seen from above in question 5, certain types of cases were deemed to be urgent and so it was these cases which received different treatment in the courts, irrespective of the amount of money involved.

7. As far as criminal cases are concerned, did cases concerning arrested defendants receive a different treatment?

As can be seen above in question 5, no new criminal trials have been permitted to commence in the Central Criminal Court (the criminal division of the High Court). In the Circuit Court, it was decided that all current criminal trials would continue but like the Central Criminal Court, no new trials would commence. Sentencing hearings were to be dealt with, where possible, by way of video-link to reduce the numbers of people in court buildings.

In the District Court, it was decided that only urgent matters would go ahead. Urgent matters expressly include cases where the accused is in custody and cases where people are charged with new offences. It does not include criminal cases where the accused is on bail or is not in custody. It was decided that remands where the accused is in custody should be dealt with by video-link wherever possible.

It is clear to see that certain criminal matters in the different courts are considered urgent and, therefore, have received different treatment to ensure that access to justice is provided.

8. What was the impact of such legal reforms on legal deadlines and procedural timeframes?

The covid-19 pandemic has affected the operations of all types of court business and has affected the ability of legal practitioners to comply with legal deadlines and procedural timeframes.

Supreme Court Practice Direction SC 21 makes express reference to late filings and says:

*“The Court is mindful of the fact that parties may experience some difficulties in relation to the filing or lodgement of documents and will, as appropriate, have regard to any such difficulties which the Court is satisfied are genuine when dealing with any issues which may arise in respect of the late filing or lodgement of documentation.”*³

Although not expressly stated, courts at all levels have adopted a similar approach with regard to late filing and will allow late filing of documents where appropriate.

While court offices have remained open, the relevant limitation period under the Statute of Limitations for the commencement of legal proceedings has been unaffected. The time limit for the commencement of proceedings under the Planning and Development Act 2000 was suspended for a period due to the pandemic.

9. What is the role played in your country by IT, e-filing, smart and remote working in the management of cases as an effect of legal measures approved in order to cope with the COVID-19 pandemic? To what extent these measures are applicable also to the activity of Public Prosecutors?

In all courts, including the High Court, the Court of Appeal and the Supreme Court, the use of electronic papers has increased. Although there has been no practice direction issued in the High Court, parties have been asked to send electronic versions of the papers to the register of the court so that they can be given to the judge ahead of the hearing. The use of electronic papers has also increased as more and more matters are being heard via remote court sittings.

An information notice was published by the courts service on the 20th April, 2020, which set out the practice for e-filing in the Court of Appeal. This can be found [here](#). This notice sets out how parties should deliver the papers electronically to the Court of Appeal office and also what format they should take.

“the electronic books of documents for the substantive hearing of an appeal shall comprise the appeal books specified in paragraph 9 of the Practice Direction CA06.”

The Supreme Court and Court of Appeal have, since late April 2020, heard almost all of the appeals before those courts remotely. Case management of cases in those courts are now conducted remotely.

³ SC 21

The High Court commenced hearing some cases remotely in late April and now does so in an increasing number of cases, including commercial, planning, non-jury and judicial review and chancery cases. Case management of cases in some lists in the High court is conducted remotely as are some of the motion lists in the High Court.

Remote hearings have also been introduced in the Circuit Court and, more recently, in the District Court. Those latter courts have continued to hear most of their cases by way of physical hearings, with strict physical distancing.

10. What is the role played by your Association in the drafting of such legal reforms? Was your Association consulted by the Government before adoption of the aforesaid measures?

The AJI was not consulted by the Government in relation to the adoption of the Covid-19 pandemic legislation. Nor would it expect to have been. In the case of challenges to the legislation, judges must hear and determine such challenges with complete independence. Judges must also approach with an open mind any proceedings to enforce rights and obligations under the legislation.

The AJI, as such, was not consulted about the measures introduced by the Chief Justice, the Presidents of the courts and the Courts Service. Various members of the Executive Committee of the AJI were consulted by the Chief Justice, the Presidents and the Courts Service and assisted in the roll out of remote hearings.

11. Did the Government consult the High Council for the Judiciary and/or other institutional instances or representatives before adoption of the aforesaid measures?

The AJI is not aware of any such consultation.

12. What is the attitude of Bar associations and Lawyers vis-à-vis such legal reforms?

The two bodies representing the legal professions in Ireland, the Bar of Ireland and the Law Society of Ireland, have worked closely with the judiciary and with the Courts Service to develop and roll out remote hearings and have been extremely supportive in that regard. No doubt they are keen to ensure a gradual and safe return to work in compliance with applicable government restrictions.